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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 94-29
Table of Allotments,) RM-8416
FM Broadcast Stations.)
)
Willows and Dunnigan, California)
To: The Commission

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APPLICATION FOR REVIEW
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Secret Communications Limited Partnership ("Secret"),
the licensee of KSFM(FM), Woodland, California, and
KMJI(AM),¹ Sacramento, California, by its attorneys,
herewith submits its application for review of the Report and
Order ("Order") released October 24, 1995, in the above-
captioned proceeding.² Secret submits that the Allocations
Branch, in amending the Table of Allotments so as to permit
KQSC(FM) to move from Willows to Dunnigan, California,
misapplied the Commission's policy with respect to community
of license changes. As demonstrated below, the reallotment
will remove an existing service -- indeed the sole night-time
voice -- from Willows, a consequence which outweighs any
claimed public interest benefit from the reallotment. The
staff's apparent failure to give any weight to the

¹ Formerly KSMJ(AM).

² Secret is the successor-in-interest to Genesis
Broadcasting, Inc., which filed comments and reply comments
in this proceeding.

significant harm to be caused by the reallocation is in conflict with case precedent and Commission policy and therefore warrants review. See 47 C.F.R. § 1.115(b)(2)(i).

Inflexibly applying its FM allotment priorities, the staff adopted the proposal on the ground that Dunnigan would receive a first local aural transmission service (priority three) while KIQS, a daytime-only AM station, would continue to provide a local aural transmission service to Willows.³ While noting the disparity in service gains and losses, the staff, however, gave no weight to the loss of Willows' only night-time service, and determined "that the reallocation to Dunnigan should be made because it triggers the higher allotment priority of a first local transmission service." Order at 4, ¶ 15. This mechanistic application of the allotment priorities fails to recognize the substantial harm to the public interest that the reallocation would create.

In liberalizing its rules with respect to community of license changes, the Commission cautioned that it would carefully weigh a loss in service "regardless of whether the service removed constitutes a transmission service, a

³ The Commission's allocations priorities applicable for FM stations are: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest factors. Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, n.8 (1989) ("Modification Order"), recon. granted in part, 5 FCC Rcd 7094 (1990).

reception service, or both" and that "[r]emoval of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service."

Modification Order, 5 FCC Rcd at 7097. In this case, there simply are no significant public interest benefits in the reallocation which offset the disruption to the public's expectation of service at Willows. Dunnigan is considerably smaller than Willows, which would be left with only one station, a 250-watt daytime-only AM station.⁴

In the comments and reply comments filed in this proceeding, the commenters contended that the proposal should be rejected for the same reasons set forth in Ravenswood and Williamstown, West Virginia, 7 FCC Rcd 5116 (1992), and Eatonton and Sandy Springs, Georgia, 6 FCC Rcd 6580 (1991). In both cases, the rulemaking proposals were denied because they would disrupt existing service. Nevertheless, despite the striking parallels between the Dunnigan reallocation and those proposed in Ravenswood and Sandy Springs, the staff's Order does no more than merely acknowledge the commenters' reliance on those cases. Neither case is addressed in the staff's analysis.

In Ravenswood, the Commission staff rejected a request to reallocate service "from the relatively isolated community of

⁴ Willows has a population of approximately 4,700 people. Dunnigan has only approximately 700 residents.

Ravenswood to a community [Williamstown] approximately half its size when the action would cause a loss of reception service" to a substantial population. 7 FCC Rcd at 5118. The proposed reallocation to the more suburban Williamstown was denied even though (like the Dunnigan proposal) it would have resulted in an overall increase in population served, would have provided Williamstown with its first local aural transmission service, and would have left Ravenswood with an AM station and a vacant FM channel. In denying the community of license change, the staff applied its allocation criteria flexibly, noting that such an approach "is appropriate in situations that would result in the loss of reception to an area when, as here, there are minimal countervailing public interest benefits." Id.

Similarly, in Sandy Springs, the staff denied the proposed city of license change on the ground that the disruption of service to a substantial population counterbalanced what might otherwise be a superior arrangement of allocations. The Sandy Springs reallocation was rejected even though it would have had no effect whatsoever on the number of services received in the involved communities. Here, the reallocation to Dunnigan will remove a service from Willows -- indeed its sole night-time service -- and leave it with only one local daytime AM station and the signals of mostly distant AM stations. See Engineering

Report submitted with Comments of Pacific Spanish Network, Inc., filed June 1, 1994, in this proceeding.

Nevertheless, despite the clear precedent of Ravenswood and Sandy Springs, the Commission staff has chosen to apply blindly the first local service preference of its allotment criteria. The Order offers no discussion of why the Commission's allotment criteria were applied flexibly in Ravenswood and Sandy Springs, but not in the instant case. The staff's inflexible application of the first local service preference is contrary not only to case precedent but to Commission policy. Indeed, the Commission has "consistently given little or no weight to claimed first local service preferences if, given the facts and circumstances, the grant of a preference would appear to allow an artificial or purely technical manipulation of the Commission's 307(b) related policies." Modification Order, 5 FCC Rcd at 7096.

In light of Ravenswood and Sandy Springs, the staff's decision amounts to an ill-considered and purely technical application of the Commission's allotment priorities. In its discussion of the gain and loss areas to be created by the Dunnigan reallocation, the staff gives little more than lip service to the disruption of service that will occur and refers only to Faye & Richard Tuck, 3 FCC Rcd 5374 (1988), to support its decision. Faye & Richard Tuck has nothing to do with disruption of service, but merely refers to the criteria

for determining whether a community under the Commission's Huntington doctrine⁵ is distinguishable from a larger urban area for purposes of awarding that community a first local service preference.⁶ Indeed, the cases relevant to disruption of service -- Ravenswood and Sandy Springs -- are not even considered in the staff's analysis.

In sum, the Allocations Branch's mechanistic application of its allocation priorities is inappropriate where a proposed reallocation would not result in a "net service benefit for the communities involved." Modification Order, 4 FCC Rcd at 4873. Here, the reallocation will deprive Willows of its only local night-time service. Weighing this fact against the theoretical gains of the reallocation, it is clear, as the Commission found in Ravenswood and Sandy Springs, that the reallocation will not result in a net service benefit. Accordingly, the Commission should reverse

⁵ Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951).

⁶ Even there, the staff failed to look at whether Dunnigan is interdependent with the surrounding urbanized area.

the staff's decision ordering the reallocation of KQSC(FM)
from Willows to Dunnigan and reject the proposal as
inconsistent with the public interest.

Respectfully submitted,

**SECRET COMMUNICATIONS
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November 24, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 1995, I caused copies of the foregoing "Application for Review" to be mailed via first-class postage prepaid mail to the following:

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